c/f 1097

(4)

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. NO: 1093 /2002

PETITIONER : Ku. Premlatha Bharghav
Retd. Teacher,
R/o A/5 Kranti Nagar,
Bilaspur (C.G.)

VERSUS

RESPONDENTS : 1. The Appellate Authority, Under Payment of Gratuity Act 1972/ Dy.Labour Commissioner, Kailashpuri, Raipur.

P. R. No. 1030/2
Presented by Shri ...
dated 10.05.02

2. The Controlling Authority, Under Payment of Gratuity Act Bilaspur (C.G.)

3. The Manager, St.Joseph Convent Higher Secondary School, Bilaspur (C.G.)

4. State of Chhattisgarh, Through Secretary, Labour Deptt. D.K.Bhawan, Raipur.

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT OR MANDAMOUS OF CERITIORARY OR ANY OTHER NATURE OR DIRECTION OF LIKE NATURE.

AFR

(G)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri**.

Writ Petition No. 1093 of 2002

Petitioner		Ku. Premlatha Bharghav
	Versus	
Respondents		The Appellate Authority Under Payment of Gratuity Act, 1972 and others

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Shri N. K. Vyas, Advocate for the petitioner.

Shri Neeraj Choubey, Advocate for the Respondent No.3.

Shri Sunil Otwani, Panel lawyer for the Respondent No.4.

ORAL ORDER

(27th March, 2006)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. The present petition filed by the petitioner under Articles 226/227 of the Constitution of India seeks a writ in the nature of certiorari against the order dated 28.2.2002, passed by the appellate authority i.e. Deputy Labour Commissioner, Chhattisgarh Region, Raipur, under the Payment of Gratuity Act, 1972 (for short 'the Act,1972), in Appeal Case No. 2/P.G.A./01.
2. The admitted facts in nutshell are that the petitioner was employed as Teacher in the Respondent No.3 School. Admittedly, the said school was fully govt. aided institution. The petitioner retired from service on 30th June, 1998 on attaining the age of superannuation.

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3. The petitioner was denied payment of gratuity under the provisions of the Act, 1972. Being aggrieved the petitioner filed an application before the controlling authority under the Payment of Gratuity Act, District- Bilaspur. The authority after hearing both the parties by his order dated 3.1.2001 (Annexure P/IV) allowed the application filed by the petitioner directing the respondents to pay gratuity under the provisions of the Payment of Gratuity Act.
4. Being aggrieved, the respondent No.3 filed an appeal under Section 7(7) of the Act, 1972 being Appeal Case No. 2/PGA/01 before the appellate authority i.e. Deputy Labour Commissioner, Chhattisgarh Region, Raipur. The learned authority by his order dated 28.2.2002 (Annexure P/I) allowed the appeal of the respondents holding that the petitioner, herein, being a teacher, is not entitled to gratuity under the Act, 1972.
5. Being aggrieved the petitioner-teacher has filed this writ petition praying for quashing of the order dated 28.2.2002 passed by the appellant authority.
6. Shri N. K. Vyas, learned counsel for the petitioner placed reliance on the decisions of Supreme Court in the case of **Ahmedabad Pvt. Primary Teachers' Assn. Vs. Administrative Officer and others** { (2004) 1 SCC 755 } and further in the case of **Rajasthan Welfare Society Vs. State of Rajasthan** { (2005) (5) SCC 275} wherein the benefit of gratuity was extended to the employees of the aided educational institutions under section 16 of the Rajasthan Non-Government Educational Institutions Act, 1989 and Rule 82 of the Rajasthan Non-Government Educational

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Institutions (Recognition, Grant-in-Aid and Service Conditions etc.) Rules, 1993.

7. Learned counsel for the petitioner further relied upon a decision of this Court dated 1.8.2005 passed in **W.P.No. 2062/2004** (Administrator, Ladhidi Multipurpose Higher Secondary School, Chirmiri & another Vs. Smt. Viddyavati Chaturvedi & another). The facts of that case are different as the payment of Gratuity to the Principal was involved in that case and this Court has held that the Principal would not be held to be a teacher for the purpose of the Act, 1972, as such he shall be deemed to be an employee for the purpose of the Act, 1972.

8. In the present case, the question of law as to whether a teacher is entitled to payment of gratuity under the provisions of the Act, 1972 is involved and the identical question of law was considered by the Supreme Court in **Ahmedabad Pvt. Primary Teachers Assn.**(Supra) and has held as under:-

> "24. The contention advanced that teachers should be treated as included in the expression "unskilled" or "skilled" cannot, therefore, be accepted. The teachers might have been imparted training for teaching or there may be cases where teachers who are employed in primary schools are untrained. A trained teacher is not described in the industrial field or service jurisprudence as a "skilled employee". Such adjective generally is used for an employee doing manual or technical work. Similarly, the words "semi-skilled" and "unskilled" are not understood in educational establishments as describing nature of job of untrained teachers. We do not attach much importance to the arguments advanced on the question as to whether "skilled", "semi-skilled" and "unskilled" qualify the words

"manual", "supervisory", "technical" or "clerical" or the above words qualify the word "work". Even if all the words are read disjunctively or in any other manner, trained or untrained teachers do not plainly answer any of the descriptions of the nature of various employments given in the definition clause. Trained or untrained teachers are not "skilled", "semi-skilled", "unskilled", "manual", "supervisory", "technical" or "clerical" employees. They are also not employed in "managerial" or "administrative" capacity. Occasionally, even if they do some administrative work as part of their duty with teaching, since their main job is imparting education, they cannot be held employed in "managerial" or "administrative" capacity. The teachers are clearly not intended to be covered by the definition of "employee".

However, the Supreme Court in para 26 has made it clear that the States are free to frame separate statutes, rules and regulations granting the benefit of gratuity to the teachers in educational institutions which are more or less beneficial than the gratuity benefits provided under the Act, 1972.

9. Learned counsel for the respondents submits that the petitioner being a teacher is not entitled to gratuity under the provisions of the Gratuity Act and the State Government has not framed any statute, rules or regulations, which provides for payment of gratuity. The case of the **State of Rajasthan Welfare Society** (Supra) is not applicable to the facts of the present case as in that case the State of Rajasthan has provided in the Rajasthan Non-Government Educational Institutions Act, 1989 and the Rajasthan Non-Government Educational Institutions (Recognition, Grant-in-Aid and Service Conditions etc.) Rules,

(E.5)

1993 for grant of gratuity to the employees of govt. aided educational institutions.

10. Having heard learned counsel for the parties, I am of the view that the ratio laid down by the Supreme Court in **Ahmedabad Pvt. Primary Teachers' Assn.** (Supra) is squarely applicable to the facts of the present case. Accordingly, the petitioner who is a teacher is not entitled to grant of gratuity under the Act, 1972. However, the government is expected to consider observations of the Supreme Court made in para 26 of the judgment passed in **Ahmedabad Pvt. Primary Teachers' Assn.(supra)** for having a separate legislation for the teachers in this regard.

11. For the reasons stated above, the petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur